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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/801,240	03/15/2004	Aaron M. Lamstein	545.41	2033

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EXAMINER

VALENTI, ANDREA M

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 03/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/801,240

Applicant(s)

LAMSTEIN, AARON M.

Examiner

Andrea M. Valenti

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 13 December 2004.  
2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-9 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1-9 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.  
5) ☐ Notice of Informal Patent Application (PTO-152)  
6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 8, and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 6,305,318 to Ford.

Regarding Claim 1, Ford teaches a pet bed for use by cats (Col. 1 line 11), said pet bed comprising a resilient, compressible fill material (#13), and an outer shell fabric (#2) defining the geometry of the pet bed as having a bottom and sides and a top, the later comprising a plush and gas permeable fabric (Col. 2 line 24-29), a closable opening in said outer shell fabric allowing for selective access to the interior of said outer shell fabric (Fig. 2 #9), a gas permeable pouch (#19) containing catnip located beneath said top fabric such that scent from said catnip is caused to permeate through the said gas permeable pouch and gas permeable top fabric.

Regarding Claim 2, Ford teaches the said gas permeable pouch (#19) containing catnip is located between said resilient compressible fill material and said top fabric (Fig. 5).

Regarding Claims 8 and 9, Ford inherently teaches that said top fabric is depressed by the weight of the cat using said pet bed, scent from said catnip is caused to permeate through said gas permeable pouch and gas permeable top surface or when

said gas permeable pouch is squeezed, scent from said catnip is caused to permeate through said gas permeable pouch and gas permeable top surface occurs when the animal is present on top of the bed.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,305,318 to Ford.

Regarding Claim 3, Ford is silent on the gas permeable pouch containing catnip is located beneath said resilient compressible fill material. However, it would have been obvious to one of ordinary skill in the art to modify the teachings at the time of the invention since the modification is merely the shifting location of a known element performing the same intended function and does not present a patentably distinct limitation [*In re Japikse*, 181 F.2d 1019, 1023, 86 USPQ 70, 73 (CCPA 1950)].

Regarding Claims 5 and 7, Ford as modified teaches the gas permeable pouch is selectively attachable to an interior surface of said top fabric by providing said interior surface with a fabric pocket sized to receive said pouch (Fig. 5).

Regarding Claim 6, Ford teaches that hook and loop fasteners are a known means of securing things in place (#9), but is silent on said gas permeable pouch is selectively attachable to an interior surface of said top fabric by hook-and-loop

fasteners. However, it would have been obvious to one of ordinary skill in the art to modify the teachings of Ford at the time of the invention with a known fastening means to prevent the catnip from becoming undesirably displaced.

Regarding Claim 4, Ford is silent on said gas permeable pouch is characterized as having a closable opening so that catnip can be periodically refillably introduced to said pouch. However, it is old and notoriously well-known to provide recyclable pouches as an environmentally sound practice to reduce waste. It would have been obvious to one of ordinary skill in the art to modify the teachings at the time of the invention for the cost reducing and environmentally beneficial results.

### ***Response to Arguments***

Applicant's arguments filed 13 December 2004 have been fully considered but they are not persuasive.

Examiner maintains that Ford teaches placing a pouch containing catnip beneath a gas permeable fabric. First, Ford teaches a pouch of catnip (Ford Fig. 5 #19 and Col. 2 line61-65). Second, Ford teaches that the pouch is located beneath a fabric layer since Ford teaches that the pouch is place in a pocket constructed out of the material that is identical to the material covering the fill material. Therefore, the pouch is located beneath a top layer of the fabric. Third, Ford teaches that the fabric material is a durable lightweight fabric, e.g. denim, which is inherently "gas permeable".

Applicant argued that Ford does not teach providing a closable opening in an outer shell fabric allowing for selective access to the interior of the outer shell fabric for placement of a gas permeable pouch containing catnip. However, applicant has merely

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claimed "a closable opening in the outer shell fabric allowing for selective access to the interior of the said outer shell fabric". Ford does in fact teach this closable opening (Ford Fig. 2 #9 and Col. 2 line 36-41).

Applicant argued that Ford does not suggest placing the gas permeable pouch containing catnip between the resilient compressible fill material of the pet bed and the shell fabric either at the top of the compressible fill material or between the compressible fill material as suggested in claims 2 and 3. However, the examiner maintains that Ford teaches a resilient compressible fill material (Ford Col. 2 line 57-59) and a shell fabric (Ford Col. 2 line 25-27 element #2). In claim 2, applicant has merely claimed that the catnip is located between the fill material and the top fabric. Examiner maintains that by Ford teaching that the catnip pouch is placed in the pocket it is inherently located between the top layer (i.e. the outer layer of the pocket) and the fill material. Applicant has not claimed that the catnip is in direct contact with the fill material. The current wording of the claim can lend to the interpretation that there can be many layers between the catnip and the fill material and if there were many layers that catnip would still be "between" the top fabric and the fill material. Even if applicant were to amend the claim placing the catnip in direct contact with the fill, it is the examiner's position that this would be an obvious modification for one of ordinary skill in the art since the modification is merely shifting the location of a known element that performs the same intended function. In claim 3, applicant has merely claimed the catnip is located beneath the fill material. From one perspective this claim could almost be a 102 rejection also since if the pillow got turned upside down the catnip inherently

would be located under the fill material. Thus it is merely a relative limitation to the orientation of the pillow. However, the examiner took that position that applicant intended to claim that the catnip was placed in the bed under the fill material with the top surface up. It is the examiner's position that modification is merely a shift in location as discussed above and does not present a patentably distinct limitation.

Examiner maintains that it is inherently a thrust of Ford's teachings to provide a bed generating a catnip response since Ford specifically teaches selected the catnip scent for cats. Ford teaches that he wants the cat to be able to smell the scent and once cats smell the catnip it inherently will generate a response.

Examiner maintains that applicant has not patentably distinguished over the teachings of the cited prior art.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrea M. Valenti whose telephone number is 703-305-3010. The examiner can normally be reached on 7:30am-5pm M-F; Alternating Fridays Off.

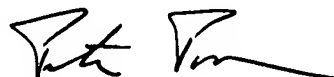
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 703-308-2574. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Andrea M. Valenti  
Patent Examiner  
Art Unit 3643

28 February 2005



Peter M. Poon  
Supervisory Patent Examiner  
Technology Center 3600